

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

CASE NO.: 19-cv-2184 (TJK)

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF
THE CENTER FOR THE LEGALIZATION OF PRIVACY
AS AMICUS CURIAE IN OPPOSITION TO CONSENT MOTION**

Proposed *amicus curiae*, the Center for the Legalization of Privacy (“the Center”), through undersigned counsel, respectfully moves this Court under LCvR 7(o) for leave to file a brief in opposition to the consent motion to approve consent judgment by the United States of America. *See* Dkt. 2, 4. In support of this motion, the Center states as follows:

1. The Center is a public interest legal organization dedicated to education about and promotion of the proper legal protection for privacy, based on common-law rights to property and contract. A primary focus of the Center is the problem of the “third-party doctrine,” which is implicated by the proposed settlement in a manner that threatens the privacy of Facebook users vis-à-vis the government.

2. The Center’s brief would be in support of neither party.

3. An *amicus* brief from the Center is desirable in this case because the Center is unique in challenging the validity of the third-party doctrine with respect to sharing of information, for a limited purpose, pursuant to a contract that is legally enforceable at common

law. Facebook's Terms of Service, as agreed to by users, are such contracts, and the Center notes that the third-party doctrine is assumed, per the terms of the proposed settlement, to be both valid and applicable to Facebook user data. It contends that these assumptions are unwarranted, particularly in light of the Supreme Court's recent ruling in *Carpenter v. United States*. 138 S.Ct. 2206 (2018).

4. The Center's position is not adequately represented by either party in this matter, as both parties have agreed to the proposed settlement, which is premised on the aforementioned unwarranted assumptions about the validity and scope of the third-party doctrine.

5. The Center's assertions are relevant to the disposition of this case because they must be considered to adequately evaluate whether the proposed settlement can achieve its assumed aim of improving and safeguarding Facebook user privacy. The Center contends that it is not clear that the best remedy for Facebook's alleged improper use of user data is to grant two government agencies warrantless access to that data during the extended time period contemplated in the proposed settlement.

6. Counsel for the Center has conferred with counsel for both parties for their positions as to the filing of such a brief. The United States takes no position. Facebook takes no position.

For the aforementioned reasons, the Center respectfully requests that the Court enter the attached Proposed Order granting leave to file an *amicus curiae* brief.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Respectfully submitted,

The Center for the Legalization of Privacy

by counsel,

/s/ Stephen R. Klein

Stephen R. Klein (Bar No. 177056)

STATECRAFT PLLC

1629 K Street NW, Suite 300

Washington, DC 20006

Telephone: (202) 804-6676

steve@statecraftlaw.com

Amy Lynn Peikoff*

THE CENTER FOR LEGALIZATION OF PRIVACY

3024 E. Chapman Ave. #129

Orange, CA 92869

Telephone: (714) 409-8275

legalizeprivacy@icloud.com

**Pro hac vice motion pending*

CERTIFICATE OF SERVICE

I CERTIFY that on September 12, 2019, I served the foregoing and attachments through the Court's electronic filing system which served a copy on all counsel of record.

/s/ Stephen Klein
Stephen R. Klein

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

CASE NO.: 19-cv-2184 (TJK)

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

_____ /

[PROPOSED] ORDER

Upon consideration of the unopposed motion for leave to file brief of the Center for the Legalization of Privacy as *amicus curiae*, it is, on this ____ day of _____, 2019 hereby **ORDERED** that the motion for leave is **GRANTED**, and that the Center for the Legalization of Privacy shall file its brief within 30 days of entry of this order.

SO **ORDERED** this ____ day of _____, 2019.

Hon. Timothy J. Kelly